

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICHARD SCHMIDT,)	CASE NO: 16-03237
)	ADVERSARY
Plaintiff,)	
)	Houston, Texas
vs.)	
)	Thursday, November 3, 2016
PLATINUM PARTNERS VALUE)	
ARBITRAGE FUND LP, ET AL,)	(3:00 p.m. to 3:57 p.m.)
)	
Defendants.)	

DISCOVERY / EVIDENTIARY HEARING

BEFORE THE HONORABLE MARVIN ISGUR,
UNITED STATES BANKRUPTCY JUDGE

Appearances: See page 2

Court Recorder: Oliver L.

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APPEARANCES FOR:

Plaintiff:

CRAIG SMYSER, JR., ESQ.
JUSTIN M. WAGGONER, ESQ.
Smyser Kaplan, et al.
700 Louisiana, Suite 2300
Houston, TX 77002

Defendants:

CHRISTOPHER D. LINDSTROM, ESQ.
Cooper Scully
815 Walker St., Suite 1040
Houston, TX 77002

WARREN E. GLUCK, ESQ. (via phone)
Holland & Knight
31 West 52nd St.
New York, NY 10019

1 Houston, Texas; Thursday, November 3, 2016; 3:00 p.m.

2 (Mr. Gluck appeared telephonically)

3 (Call to Order)

4 **THE COURT:** All right. We're here in Schmidt versus
5 Platinum Partners Value Arbitrage Fund, 16-3237. Let's go
6 ahead and take appearances if we could please.

7 **MR. SMYSER:** Craig Smyser and Justin Waggoner on
8 behalf of Richard Schmidt, the trustee.

9 **THE COURT:** Thank you, Mr. Smyser.

10 **MR. LINDSTROM:** Good afternoon, your Honor. Chris
11 Lindstrom, L-i-n-d-s-t-r-o-m, for Platinum Partners Credit
12 Opportunities and Platinum Partners Liquid Opportunities.

13 **THE COURT:** Good afternoon, Mr. Lindstrom.

14 Anyone that wishes to appear on the phone may press
15 five star.

16 Ms. Parland (phonetic)?

17 (**No audible response**)

18 **MR. GLUCK:** Thank you, your Honor. Warren Gluck,
19 Holland and Knight, counsel for the liquidators of Platinum
20 Partners Value Arbitrage Fund, LP.

21 **THE COURT:** Thank you, Mr. Gluck.

22 All right. What do we have?

23 **MR. SMYSER:** Your Honor, we're here today on two
24 issues; one, we're here to follow up on the cash disbursement
25 issue and we're here on our request for an order for emergency

1 discovery.

2 With respect to the emergency discovery issue, we're
3 asking for an order to permit us to take depositions and other
4 discovery and for the court to permit us to issue subpoenas or
5 notices for witnesses to compel their attendance. My
6 understanding in conversations with counsel for PPCO and PPLO,
7 if I may use the alphabet suit abbreviations, Mr. Lindstrom's
8 clients, is that the company has agreed that they will demand
9 appearance of the individuals but that they are not going to
10 represent the individuals. And they are -- have agreed to give
11 me, as I understand it, the names of the lawyers who would
12 represent the individuals whose depositions we have requested.

13 With respect to documents --

14 **THE COURT:** So, in essence, what you're asking me to
15 do is to just issue an order that says that expedited discovery
16 will take place. You're authorized to take expedited discovery
17 but if those individuals have any defenses to that discovery
18 that their lawyers wish to assert, you're not asking me to in
19 any way deal with those now, those lawyers could bring those
20 forward at an appropriate time.

21 **MR. SMYSER:** Yes, your Honor.

22 **THE COURT:** Mr. Lindstrom, does that work for your
23 client?

24 **MR. LINDSTROM:** No. Just a small caveat to that,
25 your Honor.

1 PPCO and PPLO object to any discovery on an expedited
2 basis. We don't believe the emergency motion has set forth the
3 standard for good cause. The plaintiff filed a response but we
4 didn't get it till late yesterday and an emergency motion was
5 filed. And my understanding of the district's rules, a written
6 response is not required in that short --

7 **THE COURT:** I agree. A written response isn't --

8 **MR. LINDSTROM:** Essentially there are the documents
9 and the depositions. On the documents, the first category is
10 essentially asking to show the various accounts where any of
11 this money that they got would have gone. I don't dispute that
12 that's something that is going to be relevant in this case. I
13 don't think it's relevant to the preliminary injunction. And
14 then the second set of documents is just anything that PPCO
15 intends to rely on at the hearing. Well, obviously the rules
16 are (indiscernible) for hearing we have to (indiscernible) any
17 exhibit (indiscernible) so we're not objecting to producing the
18 exhibits.

19 **THE COURT:** What about the witnesses?

20 **MR. LINDSTROM:** Well, the witnesses presents two sets
21 of problems. The first problem which I discussed with Counsel
22 outside is, because we've been informed that the trustee
23 intends to bring a lawsuit against at least one of the three --
24 the three men who they're seeking to take a deposition of, and
25 presumably he's ended up suing the other two -- I haven't been

1 told that but my -- I'd be surprised if they also don't get
2 sued. That puts my law firm, Cooper and Scully, in the
3 position of, we have a conflict in representing the company and
4 representing their employees if the employees are now being
5 sued for things that they -- that they did. (indiscernible)
6 lawsuits and potentially also things that the debtor did not
7 relate to this particular lawsuit, which means there's
8 something else that they did wrong. So Cooper and Scully
9 cannot present them for deposition. We've advised all them
10 there's a conflict here, you need to get your own attorneys to
11 advise you on this.

12 **THE COURT:** But the firm will direct its employees
13 that these are legitimate subpoenas.

14 **MR. LINDSTROM:** Yes, your Honor, and that's the
15 distinction we're discussing is that we cannot present them but
16 if we are served a subpoena, then because these are PPCO
17 employees, the company is supposed to produce them. Now, if
18 some of them objects to their outside counsel, then we'll cross
19 that bridge whenever we come to it.

20 **THE COURT:** What about a 30(b)(6) deposition?

21 **MR. LINDSTROM:** I don't think that was one of their
22 requests on there but presumably Cooper and Scully wouldn't
23 have any problem doing a 30(b)(6) deposition.

24 **THE COURT:** Tell me why you need to know, solely for
25 a preliminary injunction point of view, into which account the

1 money went? I mean, the injunction I issued was against all
2 their accounts so why would it matter into what account this
3 money went for the purpose of a preliminary injunction hearing?

4 **MR. SMYSER:** Well, there have been allegations about
5 whether or not we can trace the money appropriately and whether
6 the court can -- in fact, you have issued a order that requires
7 them to segregate the money but as we know, as we found out in
8 the cash disbursement process, so far we haven't found that
9 they have the money. And I am looking to find out whether or
10 not the injunction is properly covering accounts where the
11 money may be. I understand from what I --

12 **THE COURT:** I thought it covered all accounts?

13 **MR. SMYSER:** Well --

14 **THE COURT:** Like every account in the world.

15 **MR. SMYSER:** My understanding is that these funds
16 operate through subsidiaries and the subsidiaries have
17 individual investments in them. There is a list of
18 subsidiaries as long as my arm and I want to find out if the
19 money is, in fact, sitting in some other account that is,
20 arguably, legally distinct from the accounts of the entity that
21 is, in fact, the owner of that subsidiary -- which is part of
22 the reason we used PPVA Black Elk (Equity). And that entity is
23 a, as I understand it, a wholly owned subsidiary of PPVAF and
24 it is -- there may be other wholly owned subsidiaries of these
25 companies that we don't know that actually have the money now.

1 And I'm interested in finding out whether or not that's the
2 case. And a list of accounts where the money has gone seems to
3 me to be very relevant to the issues in this case and the scope
4 of the injunction that we hope the court will issue.

5 It's also related to the question of our likelihood
6 to succeed on the merits if I can show how the money has been
7 used by the company and where it has gone. It seems to me that
8 that shows further exercise of their dominion over the funds.

9 **THE COURT:** Mr. Lindstrom, what's your answer to
10 that?

11 **MR. LINDSTROM:** Just a very short, brief response,
12 your Honor.

13 There's no question that where the money went is
14 going to be relevant to the case. As the court has pointed
15 out, it's frozen all the money. So if the company is -- has
16 some account somewhere that they're not disclosing and they
17 squander the money away then they're going to have to deal with
18 the court on that point.

19 I'm not sure I agree with Mr. Smyser's position that
20 where -- the accounts that it went to is going to show any kind
21 of likelihood of success on the merits. I think he has to show
22 the facts that are pled in his complaint, that these are not
23 necessarily all true but "this is where we stand with the
24 lawsuit and this is what we're going to show. In the end it's
25 likely we're going to prove that the allegations are true

1 here". So I'm not sure I follow him on that point.

2 **THE COURT:** Well, hypothetically, let's assume he
3 wins on likelihood of success on the merits. If he loses on
4 that, nothing else matters, right?

5 **MR. LINDSTROM:** Right.

6 **THE COURT:** But if he wins on likelihood of success
7 on the merits and as he says, the money has been transferred
8 from Account A to a subsidiary and it's held by the subsidiary,
9 how are we supposed to figure out the scope of the injunction
10 if that information isn't known? So it isn't -- I think you
11 are correct that it's not relevant to whether an injunction
12 ought to be issued. And it sounds to me like he is correct
13 that if one is issued, it's relevant to the scope of the
14 injunction.

15 **MR. LINDSTROM:** Well, could we set it up where we had
16 the preliminary injunction hearing and then if he's successful
17 and then we're drafting an order on the scope, at that point we
18 could figure out, here is all the various accounts because my
19 understanding is it wouldn't be very difficult to get this.

20 **THE COURT:** If you want to stipulate today that if
21 he's successful, it would bind Platinum and all of its
22 subsidiaries to not -- if he succeeds on proving likelihood of
23 success on the merits that you'll agree to a broad scope 10
24 days from now, subject to a narrowing hearing that could come
25 later, then that probably does resolve the issue but if it's

1 not going to start off broad then I think he's made a good
2 point.

3 **MR. LINDSTROM:** Well, without knowing a full list of
4 all the clients' subsidiaries, all of this is (indiscernible)
5 because I haven't had a chance to look at all them yet. I
6 can't bind them all today; that's something that certainly I
7 will look at though.

8 **MR. SMYSER:** I will also add, your Honor, that I had
9 this discussion with Mr. Lindstrom outside and I informed him
10 of what his client had told me when they were unrepresented and
11 their client told me they could get this information very
12 easily and they had no problem giving it to me. That was when
13 I was dealing with the in-house counsel and so --

14 **THE COURT:** I appreciate that but things are moving
15 fast.

16 **MR. SMYSER:** Okay. Fair enough.

17 **THE COURT:** Let me -- I'm going to give you an
18 option.

19 **MR. LINDSTROM:** Okay.

20 **THE COURT:** I'm going to let him take the discovery.
21 You can stipulate it away by agreeing that if he prevails on
22 likelihood of success, that an initial preliminary injunction
23 would apply to the company and all of its affiliates and
24 subsidiaries, anybody they're working in concert with at this
25 point. I don't know that we would need all of that. You will

1 eventually need it. If you don't want to make that stipulation
2 -- which is just fine. I, frankly, don't know that I would
3 make it if I were in your shoes. At that point it all becomes
4 relevant and I'm going to let him have the discovery.

5 **MR. LINDSTROM:** Well, that's what I need to discuss.
6 With the court's permission, if I can have 24 hours to discuss
7 that with the client.

8 **THE COURT:** I'll put it in the order that within 24
9 hours you can either make the stipulation or I'm going to
10 require you to provide the discovery. Your choice but you can
11 talk to them first.

12 **MR. LINDSTROM:** Okay. And my understanding is that
13 applies to the production of documents we're talking about. On
14 the depositions, in addition to the issues that the firm has
15 and other issues. PPCO also objects to it. I don't think
16 there's any good cause to go take these depositions. If the
17 trustee has enough evidence to file this preliminary injunction
18 against them, I don't think it's necessary to go get them to
19 help him prepare.

20 **THE COURT:** All depends on whether you're going to
21 present a defense.

22 **MR. LINDSTROM:** Well, that's true (laughs).

23 **THE COURT:** (laughs) If you want to rely -- if you
24 don't plan to present any evidence then I may hold him to what
25 he already knows. But I've already found that what he's

1 already presented to me uncontradicted by any evidence is
2 sufficient so --

3 **MR. LINDSTROM:** Well, let me say it in a different
4 way. He also asked for the deposition of anyone that PPCO
5 intends to present --

6 **THE COURT:** Right.

7 **MR. LINDSTROM:** -- at the preliminary injunction
8 hearing. We will agree that anybody we're going to present at
9 the hearing, that person can be deposed.

10 **THE COURT:** If you're going to present a defense, he
11 gets to prepare against the defense.

12 **MR. LINDSTROM:** Yeah, right, yeah. That's something
13 that were willing --

14 **THE COURT:** No, no. If you're going to present a
15 defense of Witness A --

16 **MR. LINDSTROM:** Oh.

17 **THE COURT:** -- he gets to examine Witness B, C, D and
18 E to defeat your Witness A. If what you're telling me is, if
19 he can't produce a prima facie case without any witnesses, he
20 shouldn't win. I mean, that's sort of an appealing argument,
21 from my point of view, but it leaves you stuck because that
22 means if he does present a prima facie case -- which I've
23 already found he did in his TRO -- you're going to get a
24 permanent injunction. I don't want to put you there and I'm
25 going to allow the discovery. I'll do an order that does that.

1 Let me do it now. Why don't you have a seat, take a look at
2 what we do.

3 **MR. GLUCK:** Your Honor, Warren Gluck on behalf of the
4 liquidators of PPVA. If I can be heard for just a minute.

5 **THE COURT:** Yes, sir.

6 **MR. GLUCK:** I just wanted the record to be clear that
7 with talk about Platinum and its subsidiaries, PPVA, the
8 liquidators of PPVA, as opposed to the acronyms of PPCO and
9 PPLO, have entered into an agreement whereby the TRO, the --
10 has been discharged and we are in discussions regarding this
11 action so two requests. Obviously there is in terms of PPVA's
12 subsidiaries, in terms of the choice presented by the court,
13 then obviously no ability to bind PPVA's subsidiaries in
14 relation to that choice. And secondly, PPVA, the liquidators
15 would simply request copies of the discovery produced and the
16 ability to attend any depositions that occur.

17 **MR. SMYSER:** Your Honor, Mr. Gluck correctly states
18 that we have agreed to dissolve the injunction with respect to
19 PPVAF.

20 **THE COURT:** I signed that order. I don't know if
21 it's on the docket or not; I haven't looked.

22 **MR. SMYSER:** Thank you, your Honor. I can't remember
23 whether or not I've seen that order.

24 **THE COURT:** I remember signing it. Let me open up
25 the docket sheet.

1 Mr. Gluck, do you know if it's been entered?

2 **MR. GLUCK:** I think it's been entered and I should
3 qualify just in case that was going to be stated.

4 One of PPVA's subsidiaries, to the very best of our
5 knowledge -- which is PPVA Black Elk (Equity) -- remains
6 subject to the injunction and it was not lifted as to that
7 subsidiary. So to qualify my prior comments in that respect.

8 **THE COURT:** Okay. So I have -- the order was entered
9 at ECF-15 that dissolved the temporary restraining order.

10 **MR. SMYSER:** I see that, your Honor. Thank you.

11 **THE COURT:** Okay. So what does that mean though
12 about -- do you agree then that if it ends up in a broad form
13 injunction that it would not include the PPVA entities against
14 whom the TRO was dissolved?

15 **MR. SMYSER:** The TRO would not include PPVAF.

16 **THE COURT:** The preliminary injunction.

17 **MR. SMYSER:** The preliminary injunction, yes, your
18 Honor.

19 **THE COURT:** Why don't I do this, Mr. Gluck, to be
20 sure that you have a fair opportunity to object. I don't think
21 we'll have a problem but if you'll go ahead and go to join dot
22 me, I'll open that up so you can watch what I'm doing.

23 With respect to their ability to obtain documents
24 produced by either side or to attend discovery taken by either
25 side, is there any objection to allowing Mr. Gluck or his firm?

1 **MR. GLUCK:** Your Honor, there's no objection.

2 **THE COURT:** I know there's none by you; I want to
3 find out by them.

4 **(Laughter)**

5 Are you-all okay with that?

6 **MR. SMYSER:** Your Honor, Mr. Gluck is welcome to
7 attend any of the depositions or receive any of the discovery
8 from the point of view of the trustee.

9 **THE COURT:** Are you in the same position on that,
10 Mr. Lindstrom?

11 **MR. LINDSTROM:** In general terms, my friends at PPVA
12 are still going to be a defendant in this --

13 **THE COURT:** Right.

14 **MR. LINDSTROM:** -- suit so I have no objection to
15 them attend the depositions. There may be some documents that
16 are produced that I've already actually given to Mr. Smyser
17 that we may not want them to have at that point because they
18 haven't been formally produced but with that small caveat, if
19 there was any problem -- if it's something that we produce
20 (indiscernible) discovery, it's fine.

21 **THE COURT:** I'm sorry. So what would you not want
22 them to get?

23 **MR. LINDSTROM:** When we were discussing coming to an
24 agreement about how to -- dissolve our TRO and reach an
25 agreement to do away with the preliminary injunction, we

1 provided documents to the trustee saying, this is for your eyes
2 only; don't share this with anyone. I don't anticipate those
3 will be part of the preliminary injunction hearing -- the
4 depositions. So with that small caveat, if it's something that
5 we're producing in discovery or things we're talking about now,
6 that's fine. We'll send it to them.

7 **THE COURT:** Yeah. I mean, I'm not going to stop
8 people from exchanging documents in furtherance of
9 settlement --

10 **MR. LINDSTROM:** Right.

11 **THE COURT:** -- and you don't need to share those with
12 the world but if there's formal discovery, Mr. Gluck is still a
13 party to the proceeding. You're going to get that stuff,
14 Mr. Gluck. Does that treat you fairly?

15 **MR. GLUCK:** It does, thank you, your Honor.

16 **THE COURT:** Thank you.

17 (**Pause in proceeding from 3:19 p.m. to 3:26 p.m.**)

18 **THE COURT:** I want to hear objections to both the
19 substance and the form of that order.

20 **MR. SMYSER:** A couple of comments, your Honor.

21 With respect to "days," I would ask that the court
22 make that two calendar days. And then with respect to
23 paragraph four, here's my difficulty with that suggestion.

24 There may be a number of other subsidiaries of PPVAF
25 that have received the money. PPCO and PPLO will know that.

1 We need to know whether or not those entities are entities the
2 trustee needs to sue to try to enjoin them from spending the
3 money and dissipating the assets. This would not allow us to
4 get that information.

5 **THE COURT:** I'm not restricting you from asking any
6 questions that you want to ask.

7 **MR. SMYSER:** No, I'm talking about with respect to
8 the document discovery. The stipulation, it seems to me, would
9 allow them to escape any obligation to produce the account
10 information which, as I said, they told me themselves in a
11 phone call, was an easy piece of information for them to give
12 us.

13 **THE COURT:** But this -- let me show you. I think I
14 know where this confusion is coming from.

15 Here is your Emergency Motion for an Order on
16 Expedited Discovery. It'll bring it over here in a minute.
17 And all that it sought -- unless I read it wrong ...

18 **(Pause)**

19 ... was where they put the proceeds. You didn't ask
20 where they ultimately ended up. So at least when I read this,
21 I took it as the initial deposit account. If they then took
22 that initial deposit account and made an investment in the
23 subsidiary, I didn't take it that you had asked for that. So
24 I'm not sure you were getting there anyway. I don't know that
25 I have any problem with your getting there but it may be that I

1 was thinking differently than what you were thinking you were
2 going to get. And it may be that the employee wasn't thinking
3 of -- I've never seen accounting records that internally trace
4 proceeds. If you're looking for a tracing analysis, I don't
5 know. That's not going to be something that is likely to be
6 quite that easy but --

7 Go ahead.

8 **MR. WAGGONER:** Your Honor, if I could address the
9 court briefly.

10 **THE COURT:** Yeah.

11 **MR. WAGGONER:** We took the request -- if the money
12 goes initially to PPCO or PPLO and then they place that money
13 into a subsidiary's bank account, we regard that as being
14 encompassed by this request.

15 The concern we have with the stipulation, based on
16 Mr. Gluck's comments following the discussion of that option,
17 is that as I appreciate the liquidator's position as that any
18 agreement made by PPCO or PPLO as to the scope of the
19 injunction will not be binding upon subsidiaries of PPVAF, as
20 such, if they provide us a stipulation that we, PPCO and PPLO
21 and our subs only, will be bound by the injunction, if the
22 money went from PPCO or PPLO to a PPVAF sub, we're not going to
23 know about it and so the stipulation doesn't protect us.

24 **THE COURT:** Let me suggest a different alternative to
25 this.

1 Mr. Gluck, your client is much in the same position
2 as a bankruptcy trustee it seems to me. So the disclosure of
3 bank balances that he holds or that are in any subsidiary that
4 he controls ought to be information that you could freely
5 share. Is that fair? So that we can figure out whether we
6 have a problem here before we open a lot of -- a can of worms
7 that may just be enormously expensive. I assume that your
8 client wouldn't object to telling the trustee how much cash
9 your client has in his various accounts. Is that right?

10 **MR. GLUCK:** Well, let me qualify it in the following
11 sense because I think it's close.

12 As to PPVA, that entity, no provisional relief is
13 being sought, period. So if it were -- if the monies did go to
14 PPVA's account directly -- and I have no reason to believe it
15 did -- but in any event, is not germane to the provisional
16 relief because no provisional relief is being sought. It may
17 be germane to some underlying claim but it would not be germane
18 to the provisional relief and therefore not within the scope of
19 expedited discovery, at the very least.

20 We have generally discussed, the liquidating trustee
21 and I, the parameters by which and the timing by which an
22 action in -- the underlying action in respect to PPVA and
23 PPVA's direct subsidiary, Black Elk, PPVA would move forward.
24 So what -- the question is, do they need PPVA's (indiscernible)
25 that entity that's expedited for now or just generally?

1 Probably not because they're not seeking provisional relief.

2 Now, as to PPVA's direct subsidiary -- and this
3 includes, by the way, PPVA Black Elk which is currently a
4 defendant in this matter and currently the subject of a
5 temporary restraining order. And I don't believe there will be
6 any objection to the provisional restraining order with respect
7 to (indiscernible) Black Elk. Again, there's no problem.

8 With respect to any other subsidiaries of PPVA, let
9 me -- I begin by stating that as a general rule, the
10 liquidator's investigation of those subsidiaries, the assets
11 they contain in ongoing, I'm not sure that we have, for
12 example, bank records with respect to subsidiaries. I know we
13 have bank records with respect to PPVA but this is part of a
14 process that in their official capacities -- and liquidators
15 began Thursday of last week. And so what I would say is the --
16 as far as I know, I don't think we have any subsidiary bank
17 information. I think we have a right to it -- and this is
18 something I was discussing with the trustee. Our defense in
19 this case is -- "our," meaning the liquidator of PPVA's defense
20 in this case, assuming it chooses to put one up, is ultimately
21 going to be done with witnesses and documents that are not
22 currently and directly within our control. I think we have a
23 right to it under Cayman law and know that we will have rights
24 to it under Chapter 15. Once recognition is granted,
25 recognition is expected -- well, recognition hearing, I should

1 say, is currently scheduled for November 21. So while I
2 realize that I do put a solution forward, I didn't put forward
3 the status. And I hope that's at least responsive to
4 Mr. Smyser's points and requests.

5 **THE COURT:** Let me try one more thing, just see this.

6 **(Pause)**

7 So you'd get the subsidiaries. You're either going
8 to get tracing or you'll get the subsidiaries he doesn't know
9 about. They're the ones that -- we don't know yet what you
10 need. So I still think they probably ought to give you the --
11 you know, maybe you can get the tracing information but it's
12 not relevant if you're going to get the broad form injunction,
13 right?

14 Mr. Gluck, I assume you don't object to that, right?

15 **MR. GLUCK:** Well, this puts -- see, I think with that
16 language, it's even worse, your Honor, because we don't even --
17 the choice that could be made by PPCO and PPVA and PPLO and
18 PPCO could be to stipulate to enjoin the PPVA subsidiaries
19 without providing the very information that would either clear
20 them or put them in the running for a TRO. So we could never
21 allow that -- we could never allow a choice by a third party to
22 bind the subsidiaries of PPVA. Certainly for any -- for any --
23 for there to be an application for any PPVA subsidiary, other
24 than the PPVA Black Elk -- which is already a defendant -- to
25 be enjoined, we would need notice of that and of course all the

1 basis for it, which we obviously don't have now.

2 **MR. WAGGONER:** Your Honor, I think all of this really
3 counsels in favor of an unconditioned obligation to just
4 produce the discovery because, candidly, if the proceeds went
5 to someone other than, for example, a PPVAF subsidiary, we
6 would need to know who that was even if they're totally
7 unrelated. And so I think the better course here would simply
8 be to provide the documents that were represented to us to be
9 not that big of a deal to produce in the first place.

10 (**Pause from 3:36:45 to 3:38:13 p.m.**)

11 **MR. GLUCK:** Your Honor, Warren Gluck here.

12 Just reading this, again, I think the problem here is
13 twofold. One is that if money went into PPVAF is not relevant
14 to the provisional relief sought -- because there's no
15 provisional relief being sought against PPVAF.

16 **THE COURT:** I'm going to overrule that objection.

17 **MR. GLUCK:** And of course --

18 **THE COURT:** I'm going to overrule that objection
19 because it's relevant to where it might have ended up. It
20 could have gone through PPVAF and somewhere else. It's
21 relevant.

22 **MR. GLUCK:** Okay. Then the second issue on top of
23 that is that assuming that we could tell from the banking
24 account records of PPVAF where the money came from -- which
25 would mean it would be received from Black Elk -- the question

1 would then be how do you decide a fungible world of money what
2 a portion of that went to any subsidiary. And to compound
3 that, the notion that the liquidators, with their very limited
4 knowledge could get this done within any sort of expedited time
5 frame, I think it's virtually an impossibility. But what I can
6 say is I think we've received some account statements
7 concerning PPVA's primary bank. Whether those statements we'll
8 be reviewing and certainly revealing enough for us to provide a
9 complete accounting is very problematic. This is exactly why
10 the discussions with the Black Elk trustee has centered around
11 us filing an answer in early February. With that answer maybe
12 still -- I mean, still (indiscernible) we don't have enough
13 information because we are engaging in a Chapter 15 discovery
14 process to get this information.

15 **THE COURT:** What if I just leave you-all out of that
16 part of paragraph five, the defendants other than PPVAF? You
17 should want this, right? It'll help your trustee figure out
18 what --

19 **MR. GLUCK:** Yeah, the defendants other than PPVAF.
20 That makes more sense.

21 **THE COURT:** All right.

22 **MR. WAGGONER:** Your Honor --

23 **THE COURT:** Mr. -- go ahead.

24 **MR. WAGGONER:** I would ask that we end that first
25 sentence of paragraph five after "into any account".

1 **(Pause)**

2 **THE COURT:** Well, no, because that takes away four.
3 I'm going to leave four. This is to deal with the PPVAF
4 problem. So if it never touch PPVAF or any of its
5 subsidiaries, then Mr. Lindstrom's stipulation as to everybody
6 else will be broad and cover it all.

7 **MR. WAGGONER:** Well then how about it say, "any
8 account of anyone other than PPCO, PPLO or any of its
9 subsidiaries"? That would cover PPVAF, any of its
10 subsidiaries, or anybody else in the world they might have
11 transferred the funds to.

12 **THE COURT:** I think that's fine.

13 **MR. GLUCK:** Your Honor, I think we would need to --
14 I'm sorry, this is Warren Gluck.

15 I think PPVAF would need to reserve its right to seek
16 the ultimate destination of the money. If money did go to a
17 PPVAF subsidiary that is not currently the subject of
18 proceedings, we would need to see if it went somewhere after
19 that. So we would need some rights to seek that information as
20 well in due course.

21 **THE COURT:** We're not taking that away. That's fine.

22 So this would be which -- into any account other than
23 account of who?

24 **MR. SMYSER:** Of PPCO.

25 **MR. WAGGONER:** And I guess we need to put the full

1 name, your Honor, and I can read that --

2 **MR. SMYSER:** "Platinum Partners Credit Opportunity
3 Fund, LLP".

4 **MR. WAGGONER:** I think it's just "LP".

5 **MR. SMYSER:** "LP," I'm sorry. "Platinum Partners
6 Liquid Opportunity Fund, LP".

7 **MR. WAGGONER:** It's "Opportunities," plural, your
8 Honor.

9 **(Pause)**

10 "Or any of their subsidiaries".

11 **(Pause)**

12 **THE COURT:** Mr. Lindstrom, does that resolve your
13 concerns? So you have the right to make a stipulation. If you
14 don't, you've got to provide all the tracing for everything but
15 if you do make the stipulation, you still have to provide
16 tracing for anything that didn't stay in PPCO or PPLO or its
17 subsidiaries.

18 **MR. GLUCK:** Your Honor, can we add the words, "to
19 their ultimate destination," at the end of the last sentence of
20 paragraph five?

21 **THE COURT:** Right. And if those records exist, they
22 ought to be produced, I agree.

23 **MR. WAGGONER:** And your Honor, we told you
24 incorrectly on the names of these entities. It's -- in the
25 Platinum Partners Credit Opportunity, it should be

1 "Opportunities," plural, "Master Fund". And then the next one
2 is "Platinum Partners Liquid Opportunities Master Fund,"
3 singular.

4 **THE COURT:** It's the same. Okay. Liquid. One of
5 them is "Liquid".

6 **MR. WAGGONER:** One of them is "Credit Opportunities"
7 and one of them is --

8 **THE COURT:** "Liquid". Got it.

9 **MR. WAGGONER:** "Liquid Opportunities".

10 **THE COURT:** Okay. Mr. Lindstrom?

11 **MR. LINDSTROM:** Well, on one basis we object because
12 this goes beyond what was asked for in their motion for
13 emergency relief. We had neither 24 hours to respond to that
14 motion. If this had been in there, we probably would have
15 asked for additional time to respond to that because I'm not
16 sure how long it would take to provide that kind of accounting,
17 so that issue with my claim. And I don't know if it's the
18 intention of the court but the way it reads to me is that's --
19 also that's to be provided by tomorrow.

20 **THE COURT:** No, that doesn't have to be provided by
21 tomorrow. You can make a stipulation and then it limits what
22 you have to provide. You have to provide everything in a
23 reasonable period of time.

24 **MR. GLUCK:** Your Honor, I think I have one more.

25 In paragraph four where it says -- paragraph four

1 after the semicolon where it says, "provided," (comma), the
2 stipulation need not," I think it should say, "'may not'
3 include a stipulation with respect to PPVAF or its
4 subsidiaries". In the event that the ultimate destination of
5 these funds was a PPVAF subsidiaries, given -- we would either
6 fight it or separately stipulate it. We just can't have any
7 stipulations applying to PPVAF or its subsidiaries.

8 **THE COURT:** I'm going to go back and look at the
9 motion.

10 **(Pause)**

11 So I think what's become clear from this,
12 Mr. Lindstrom, is that their request turns out to be
13 reasonable. And their request, thoroughly read -- because it
14 asks for present balances and it says, "all accounts in which
15 any defendant placed proceeds," it's a pretty broad request. I
16 potentially could simply overrule your objection. I think
17 you're going to have to do all of this anyway because I do
18 think it's broad enough to cover it but I'm trying to honor the
19 objection by limiting what you might have to do with the
20 stipulation. I'm going to let you pick. I'll either overrule
21 it or will do what paragraph four says.

22 **MR. LINDSTROM:** Well, if those are the choices I'll
23 prefer to keep in paragraph four of those choices. This is
24 more of a overall broader thing to all the discovery. The
25 preliminary injunction hearing is currently set November 16th

1 so I guess we need to have some deadlines in there as to when
2 we need to produce all these things.

3 **THE COURT:** So I simply require that it be completed
4 cooperatively in an expedited way. If you want some deadlines,
5 I'll give them to you but I was thinking you'd probably be able
6 to work with counsel better than something I could create here
7 and do some sort of a rolling production.

8 **MR. LINDSTROM:** It shouldn't be difficult producing
9 the documents. That should be -- well, in paragraph four.
10 That shouldn't be -- assuming (indiscernible) that should not
11 be a problem.

12 **THE COURT:** Okay.

13 **MR. LINDSTROM:** I don't know (indiscernible) time.
14 I'm more talking about the depositions because it's neither
15 thinking about the availability of the witnesses and their
16 lawyers. I know our schedule is very tied up next week and
17 even the following week so it's going to be --

18 **THE COURT:** Look. I mean, I don't have any problem
19 if you want more time. I mean, I assume that we could enter a
20 sequential injunction and set you for, then, a further
21 evidentiary hearing at a time that's convenient to you. So if
22 this is squeezing you on time -- I'm forced -- I said at the
23 last hearing -- and I don't know if you were there -- I'm
24 forcing them to act because I've got concerns about the 14-day
25 limits in Rule 7065. But if you want more time, you can

1 stipulate to a preliminary injunction hearing without prejudice
2 to your ability to come back and I'll give you a hearing two
3 weeks later or whatever you want. I mean, I've got time.

4 **MR. LINDSTROM:** And I appreciate that but I think
5 it's also -- I'm not sure (indiscernible) but it's kind of
6 squeezing them also because I assume they're going to send out
7 a subpoena this afternoon to me and I'll forward it to the
8 witnesses and their lawyers today -- which means they have --
9 the way this written -- till Saturday to file an objection.
10 Which means on (indiscernible) -- I think it was Tuesday -- to
11 have a hearing -- and the hearing would be on Monday -- the
12 quickest they'd have a hearing which means that only leaves,
13 really, Tuesday, Wednesday, Thursday and Friday for
14 depositions, assuming they're even available. So it kind of
15 puts a squeeze on them also in terms of -- I don't know what
16 their availability is --

17 **THE COURT:** I agree. I mean, it's a very tight
18 schedule and I've got a whole (indiscernible) to that schedule.
19 I don't know if they'll (indiscernible) to that schedule so --

20 **MR. LINDSTROM:** Yeah. And that's (indiscernible) the
21 things that we might be talking about whenever we held the
22 hearing to figure out how we're going to proceed on this.

23 **THE COURT:** Yeah but I mean, if you right now tell me
24 you want more time, I'll do that but you're going to have to
25 agree to extend the injunction.

1 **MR. LINDSTROM:** No, on this one we're not agreeing,
2 your Honor.

3 **THE COURT:** That's fine. Then I don't even have a
4 choice but to do it on the schedule, although I agree, I'm
5 creating something very inconvenient for everybody. I don't
6 know how else to do it, given the requirements of the rules.

7 **MR. WAGGONER:** Your Honor, in that regard, since we
8 can't compel them to agree to extend the date of the
9 preliminary injunction hearing, we would like a date-certain
10 and some reasonable amount of time in advance of the existing
11 setting by which the documents will be produced, understanding,
12 obviously, that if the schedule gets pushed, then we're going
13 to be amendable to extending out the time for -- or modifying
14 the order to extend the time.

15 **THE COURT:** In fairness, the second sentence of my
16 order requires cooperation with respect to discovery dates and
17 it's bilateral. And if people don't comply with that -- this
18 isn't a situation where I've got lawyers that don't know how to
19 conduct business. I don't know if you-all know the Cooper
20 Scully firm but I've dealt with Mr. Lindstrom for what, three
21 years now, Mr. Lindstrom? -- something like that?

22 **MR. LINDSTROM:** I believe so or quite that long.

23 **THE COURT:** Yeah, I mean, I wouldn't expect you to
24 have that kind of a difficulty. There may be a difficulty
25 beyond that where it just doesn't work -- at which point people

1 are going to have to seek some sort of relief -- but I don't
2 think it's going to be a lack of professionalism by Counsel.

3 **MR. WAGGONER:** I certainly wouldn't suggest that,
4 your Honor.

5 **THE COURT:** Yeah, I just mean --

6 **MR. WAGGONER:** I don't think the issue would be with
7 him as opposed to clients.

8 **THE COURT:** I just mean I don't know how to put a
9 deadline in. Let me let you-all meet. If you-all can't agree
10 on things that bind you, it's not like I haven't given you-all
11 hearings pretty freely.

12 **MR. SMYSER:** You've been very accommodating, your
13 Honor, with your time and we appreciate that. And I, too, am a
14 cooperative litigator. And the only reason I filed this motion
15 is because, as the court -- I've got the emails here where I
16 made this exact request more than a week ago, asking for these
17 documents, asking for these depositions. And the only reason I
18 came to the court --

19 **THE COURT:** If any of that came out as a criticism of
20 you, it was not intended to. I mean, I see the defendants as
21 having -- as you laid out in your motion -- it took them a
22 while to settle on who their lawyer was and that's caused some
23 delays which is going to now cause some inconvenience but it
24 wasn't in any way your responsibility and I did not mean it
25 that way. I just meant I would prefer something that requires

1 counsel to work together than me picking dates. And if that
2 doesn't work -- because you can't control Mr. Schmidt or he
3 can't control Platinum, you-all come right on back, at short
4 notice. But I don't want to -- it's going to be better if the
5 clients will respect their lawyers' agreements and I'm going to
6 let you-all try and make agreements and make your clients agree
7 to it. See.

8 What else do we need to do today?

9 **MR. WAGGONER:** I think the second issue, your Honor,
10 is the question --

11 **MR. GLUCK:** Before we go to second issue -- your
12 Honor, this is -- I just don't want to go back to this. This
13 is Warren Gluck.

14 I'm disagreeing this one more time in this proposed
15 order and I think -- while I think it's obvious from the
16 context of this hearing and so long as Mr. Smyser does not have
17 a problem with this -- can we add a sentence that says --
18 because it says "defendants," which is fair but can we say that
19 "no subpoenas shall be directed to PPVA" because (a), PPVA is
20 not the subject to liquidation but (b), we frankly don't have
21 the capacity to respond to it. I guess what I'm saying is the
22 liquidators aren't expecting to be receiving a subpoena.

23 **MR. WAGGONER:** We don't expect to send a subpoena to
24 PPVAF, your Honor.

25 **THE COURT:** Thank you. All right.

1 **MR. WAGGONER:** Okay, that's fine.

2 **THE COURT:** Thank you.

3 What are the other issues we have today?

4 **MR. SMYSER:** The issue goes back to the projected
5 cash disbursements that we've been working on for the last week
6 or so. We have reached agreement on most of the issues. We
7 have reach agreement on the total retention payments. We have
8 reach agreement on the new counsel retainer. We still have yet
9 to reach an agreement on LC Energy (phonetic), which is a deal
10 funding, and it was on line 65 of the exhibit which we attached
11 to the hearing that we had on this issue last week. Actually I
12 think it was now Monday. And we do not have an agreement yet
13 on line 73 which is FNBCT, First National Bank of Central
14 Texas, a requested disbursement of \$543,900. And LC Energy's
15 requested disbursement of \$350,000. Otherwise, your Honor, I
16 think we have agreements.

17 **THE COURT:** All right. Mr. Lindstrom, when would you
18 like -- I think we'd set today for your hearing on that. I
19 don't see your witnesses here so you tell me how you want to
20 proceed on that.

21 **MR. LINDSTROM:** No. You know, to be quite candid,
22 your Honor, I think what we provided them is -- would be
23 sufficient to convince them to make these payments. They did
24 send questions to us which I forwarded along to our client to
25 help me respond to them. So I'm hopeful we won't even have to

1 have that hearing. But if I could check with my client and our
2 office and figure out a day and I can give your office a call
3 tomorrow. And of course I'll talk to Mr. Smyser --

4 **THE COURT:** That's fine. Basically, I'm going to let
5 -- we've sort of set out a two-tiered thing -- and again, I
6 know you're fairly new on it -- which is, anything you-all can
7 agree on, I don't think I need to be involved in. If you-all
8 aren't in agreement on it, you can request an emergency hearing
9 to compel a release of funds. And I'd given you today to do
10 that and if you want a delay in that, that's fine, just figure
11 out when you want it.

12 **MR. LINDSTROM:** And if for some reason we can't
13 agree, I'll call his office and say, let's figure out a day
14 that you're available and I'm available and we can come back.

15 **THE COURT:** That's fine. We'll make a docket entry
16 that counsel may contact Ms. Dolezel to schedule an emergency
17 hearing with respect to disputes about expenditures and she'll
18 get you in pretty quickly.

19 **MR. SMYSER:** Thank you, your Honor. I think that
20 concludes the issues that we have.

21 **MR. LINDSTROM:** It is. That's all, your Honor.

22 **MR. SMYSER:** And I will say, I have a note here. We
23 did file the State -- so called State-case against the
24 individuals today. I know people were asking about that so
25 I'll inform the court that we filed that case today.

1 **THE COURT:** You filed it not here; is that right?

2 **MR. SMYSER:** It is in State Court in Harris County.

3 **THE COURT:** Okay.

4 **MR. SMYSER:** Thank you, your Honor.

5 **THE COURT:** All right. Thank you. We are in
6 adjournment.

7 **(Proceeding adjourned at 3:57 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



December 4, 2016

signed

Dated

TONI HUDSON, TRANSCRIBER